

Respondent and its insurance carrier do not dispute that claimant was injured while working for the respondent on October 30, 1995, in Coffeyville, Kansas. However, because claimant filed a claim in the Texas worker's compensation system and received both temporary total disability and permanent partial disability compensation, the respondent and its insurance carrier contend claimant is required to pursue his Kansas claim pursuant to K.S.A. 44-528, the review and modification statute. Because the

Administrative Law Judge did not require claimant's compliance with K.S.A. 44-528, respondent and its insurance carrier contend the Administrative Law Judge awarded claimant compensation for an injury that did not arise out of and in the course of employment with respondent. Also, they contend the Administrative Law Judge exceeded his jurisdiction by granting preliminary hearing benefits because claimant had allegedly reached maximum medical improvement.

Finally, respondent and its insurance carrier contend the Administrative Law Judge exceeded his jurisdiction by placing certain limitations on the physicians from whom claimant could elect treatment.

FINDINGS OF FACT

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

- (1) Claimant, a Texas resident, was injured while working for the respondent on October 30, 1995, in Coffeyville, Kansas. At the time of the accident, claimant was operating a crane when a 5-pound, 12-inch bolt came loose from a load and struck him in the head. The parties stipulated that the accident arose out of and in the course of employment with respondent.
- (2) As a result of the accident, claimant has pain in his neck and upper back and headaches. Claimant has seen several physicians, some indicate claimant needs additional medical treatment but some indicate claimant has reached maximum medical improvement.

CONCLUSIONS OF LAW

- (1) The Administrative Law Judge did not exceed his jurisdiction and authority by awarding claimant preliminary hearing benefits. The argument that claimant must now pursue his Kansas claim as if it were a review and modification proceeding has no merit.

K.S.A. 1997 Supp. 44-534a specifically empowers an administrative law judge to award temporary total disability and medical benefits upon preliminary hearing. The Administrative Law Judge weighed the medical evidence with claimant's testimony and determined claimant was entitled to the benefits requested. The Appeals Board is without jurisdiction at this juncture of the proceeding to reweigh that evidence.

- (2) The Administrative Law Judge did not exceed his jurisdiction by requiring respondent and its insurance carrier to provide the names of three physical medicine specialists who practiced within 100 miles of claimant's Texas residence from which claimant could select an authorized treating physician. The Administrative Law Judge has

the authority to place reasonable restrictions upon an insurer's obligation to provide reasonable and necessary medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this review should be, and hereby is, dismissed; that the preliminary hearing Order dated January 7, 1998, entered by Administrative Law Judge Floyd V. Palmer remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Matthew S. Crowley, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director